

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4686 of 1986

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SPECIAL CIVIL APPLICATION No 4688 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DHANALAXMI APPT COOP HSG SOC

Versus

MANILAL LALLUBHAI VASHI

Appearance: (In all SCAs)

MR AD PITHANI for Petitioners

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/01/97

ORAL JUDGMENT

All these three Special Civil Applications have arisen from the common order passed by the Gujarat State Cooperative Tribunal at Ahmedabad in three appeals filed by the respondents and as such, the same are being disposed of by this common order. Otherwise also, the

facts and grounds are common in all these Special Civil Applications.

2. The facts of the case are taken from Special Civil Application No.4686 of 1986. The respondent filed a Lavad case before the Registrar's Board of Nominee at Surat inter alia contending that one Shri Rejumal Vetiani was the contractor of the petitioner No.1 and through the said contractor, the respondent made certain payments to the society till the year 1974. Thereafter the construction work of the said society was stopped. The construction work was restarted in the year 1978. Because of this time gap, the society has demanded price difference from its members. The respondent did not agree to pay the price difference. On 21st November 1979, the society returned the amount paid by the respondent by a cheque and hence the suit has been filed by the respondent for a declaration and permanent injunction and also for a direction to the society for the allotment of the flat in question to the respondent. During the pendency of the Lavad case, the respondent has also prayed for grant of interim relief restraining the society from transferring the possession of the flat in question which was originally allotted to the respondent to any third person. The suit has been contested by the society by filing a written statement, inter alia contending therein that the flat was allotted to the respondent. Further defence has been taken that the members did not pay the amount due regularly to the society till 1974 and accordingly the construction work of the petitioner society was compelled to be stopped and thereafter after a period of about four years, it was started again and rightly the demand has been made for outstanding amount failing which it was stated that the name of the respondent shall be removed from the membership of the society. A reference has been made to the correspondence which has been alleged to be made by the society to the petitioner, in the written statement. The society called upon the respondent to show cause why he should not be removed from the membership, but in response to the said notice, he has not remained present and as such, a Resolution has been passed on 12th July 1979 removing the respondent from the membership of the society. Then a Resolution has been passed in the general Meeting of the society. On 13th July 1979, the society has come up with the case that, a letter was sent to the District Registrar of Cooperative Societies, Surat as per the provisions contained in the Gujarat Cooperative Societies Act, and the Rules framed thereunder for the approval of the Resolution of the society of removing the respondent from its membership.

The society has stated that alongwith the aforesaid letter, a copy of the Resolution passed by the society in its General Meeting held on 12th July 1979 has also been sent. This letter alongwith the Resolution was stated to be delivered in the office of the District Registrar of Cooperative Societies, Surat, by hand delivery. A copy of the letter alongwith the Resolution was also stated to be sent to the District Registrar of Cooperative Societies, Surat, under the Certificate of Posting. After holding a full fledged trial of the suit, the Registrar's Board of Nominee at Surat, by its order dated 18th May 1981, decreed the Lavad case in favour of the respondent. The petitioner being aggrieved by the said decision of the Registrar's Board of Nominees, Surat, preferred appeal, being Appeal No.139 of 1981 before the Gujarat State Cooperative Tribunal at Ahmedabad, which came to be decided under the order dated 7.10.82 and the matter was remanded back to the Registrar's Board of Nominees at Surat. Shri Chandubhai Gopalji Patel, District Registrar of the Cooperative Societies, Surat, was examined in the case as a witness. Shri Patel has also produced a letter dated 4.7.83 written by the District Registrar stating that the letter dated 13th July 1979 written by the petitioner society was not received in the office of the District Registrar of Cooperative Societies, Surat. The Registrar's Board of Nominees at Surat has decreed the suit in favour of the respondent on 19th November 1984. The matter was again taken up by the petitioner to the Cooperative Tribunal by filing appeal No.17 of 1985. The Tribunal has dismissed the appeal of the petitioner on 11.10.85. Hence this Special Civil Application.

3. The learned counsel for the petitioner contended that Shri Chandubhai Gopalji Patel was examined as one of the witnesses in this case on remand of the matter by the Tribunal earlier and as such, he was an interested person in the matter. Shri Patel subsequently has assumed the charge of the office of the Registrar's Board of Nominee and he has decided in the said capacity, the Lavad case in favour of the respondent and as such, the judgment of the Lavad suit vitiates only on this ground. It has next been contended that the inward register has not been produced by the District Registrar of Cooperative Societies, Surat, and as such, an adverse inference has to be drawn in the matter. Both the authorities below have committed serious illegality in holding that the letter dated 13th July 1979 has not been sent to the District Registrar of Cooperative Societies, Surat, for approval of the Resolution of the Society passed for removal of respondent from the membership thereof.

Lastly it is contended that the finding of the authorities below that the petitioner was not given the proper opportunity before the society in its Annual General Meeting resolving to remove him from the membership, is perverse.

4. None present for the respondent nor the respondent has filed reply to these Special Civil Applications.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the petitioner and perused the Special Civil Applications and have gone through the orders of the both the authorities.

6. In these cases, Shri Chandubhai Gopalji Patel, acting as the nominee, passed the decree in favour of the respondent. It is also correct that Shri Patel was examined as one of the witnesses in these cases. This point has been considered by the appellate authority and the matter has been decided against the petitioner. Though this point may have some merits, but on this ground only, no interference can be made in the order passed by the appellate authority. It is not the case where this point was not noticed by the appellate authority and the appellate authority has also held that if Shri Mule, the then District Registrar would have been examined, then also, he cannot throw any more light than the fact which is available on the record. Shri Mule also wrote a letter to the society that letter regarding approval of the action of the society of removal of respondent from the membership has not been received in the office. In view of this letter of Shri Mule, the Tribunal has rightly come to the conclusion that he could not have given the statement contrary to what he has written earlier. The inward register was not produced, but the contention of the learned counsel for the petitioner that for non production of inward register, an adverse inference should have been drawn against the respondent, is not tenable. Non production of inward register goes in favour of the respondent as there is nothing on the record to establish that the resolution expelling the respondent from the membership of the society has been sent for approval of the District Registrar, Cooperative Societies, Surat. Any decision of the society taken for removal of the member is not valid until it is approved by the District Registrar as per the provisions of Section 36 of the Cooperative Societies Act. Both the Courts have recorded concurrent finding of fact on the question that the letter dated 13th July 1979, for approval of the resolution dated 12th July 1979

has not been sent to the District Registrar for approval thereof by the petitioner. This finding of fact does not call for any interference. The petitioner has placed reliance only on deeming provision of the approval of the Resolution of the society after the expiry of three months, but that deeming provision has rightly not been applied to the present case. The deeming provision could have been made applicable or put in service where the petitioner would have proved as a fact to the satisfaction of the authorities that the Resolution dated 12th July 1979 was sent to the District Registrar of Cooperative Societies, Surat, but in the present case, the finding of both the authorities is otherwise and as such, the deeming provision was not applicable. Very conveniently the petitioner has come up with the case that the letter dated 13th July 1979 was received in the office of the District Registrar by peon, Shri Babu. That defence has rightly been not accepted by both the authorities. It is very easy to create such a defence as a person of the status of class IV may have come forward to oblige the petitioner. The Tribunal has given alternative reason not to accept the contention of the petitioner and that approach is also perfectly legal and justified. Even if we presume that the letter was received in the office of the District Registrar, then also it is undisputed fact that the District Registrar has not made any active investigation in the matter.

7. Both the authorities have also given a concurrent finding of fact that the respondents were not given the opportunity of producing any defence by the society. The respondents were the persons who have deposited with the society, a handsome amount and they were interested to keep the flat. It is difficult to believe that they will not respond to the notice given to them for their removal from the membership of the society in these facts and circumstances. The petitioner society has relied only on the mode of sending the notices under the postal certificate which also creates a doubt in the mind of the Court. The removal of a member from the society is a serious matter and the society should have relied upon more authenticated and safer mode of service of the notice, i.e. notice should have been sent by Registered Post A.D. In the presence of the facts which have come on record, the finding of fact recorded by both the authorities does not call for interference of this Court as the findings recorded therein cannot be said to be perverse or arbitrary. The Tribunal which was an independent body has held that the respondent was not given an opportunity of producing defence as well as the Resolution was not sent for approval of the District

Registrar and in presence of these findings, the first ground raised by the learned counsel for the petitioner is not of much substance. Moreover, in my opinion, Shri Chandubhai Gopalji Patel was not a party to the proceedings and he has no interest in the matter. His statement has been recorded in the capacity of District Registrar, which post he was holding and subsequently he became the nominee and decided the matter. The principle as laid down and accepted that a person cannot be a judge in his own cause, cannot be made applicable to the present case and for the aforesaid reasons. Yet there is another reason which goes in favour of the respondents. The Resolution of the society is per-se illegal as it has been passed in violation of principles of natural justice. In case the judgment of the Registrar's Board of Nominee is set aside on the ground that it was given by Shri Patel who was one of the witnesses in the matter, then what this Court will do is that it will restore an illegal Resolution of the society. This Court will refuse to issue a writ of Certiorari where the effect of quashing the impugned order would be to restore an illegal order. Reference if any needed, then may have to the decision of the Hon'ble Supreme Court in the case of Gadde Venkateswara Rao v. Government of Andhra Pradesh & Ors., reported in AIR 1966 SC 828, decision of Rajasthan High Court in the case of Jagan Singh v. State Transport Appellate Tribunal, reported in AIR 1980 RAJ.1, decision of Kerala High Court in the case of A.M. Mani v. Kerala State Electricity Board, reported in AIR 1968 KERALA 76, and decisions of Patna High Court in the cases of Devendra Prasad Gupta v. The State of Bihar & Ors., reported in AIR 1977 PATNA 166 and Chintamani Sharan Nath Sahadeo v. State of Bihar & Ors., reported in AIR 1990 PATNA 165.

8. In the presence of the findings of the fact recorded by the Tribunal it may not be justified in extending the jurisdiction of this Court under Article 227 of the Constitution of India in the present case. This Court, under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to the cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice where, grave injustice will be done unless High Court interferes. These are the observations which has been made by the Hon'ble Supreme Court in the case of Laxmikant Revachand Bhojwani vs. Pratap Singh Mohan Singh Pardesi, reported in 1995(6) SCC 576. Present is the case, where, in case interference is made by this Court under Article 227 of the Constitution, it may cause

grave injustice to the respondents.

9. In the result, all these Special Civil Applications fail and the same are dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

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(sunil)